

DRAFT Meeting Summary

Willamette Mercury Multiple Discharger Variance Advisory Committee



State of Oregon
Department of
Environmental
Quality

November 1, 2018
DEQ Lloyd Offices Room 1101
700 NE Multnomah St.
Portland, OR 97202

List of Attendees

Members - Stephanie Eisner, City of Salem/Association of Clean Water Agencies; Michael Karnosh, Confederated Tribes of Grand Ronde (pm only); Abbie Laugtug, Oregon Business and Industry; Jeff Stone, Oregon Association of Nurseries (via phone); Kathryn VanNatta, Northwest Pulp and Paper Association; Allison Laplante, Northwest Environmental Defense Center (by phone); Donna Schmitz, Benton County Soil & Water Conservation District (by phone); Michael O'Leary, Northwest Guides and Anglers Association (by phone/am only)

Agency Advisors

Lindsay Guzzo, U.S. EPA

DEQ Staff

Spencer Bohaboy
Aron Borok
Alex Liverman
Debra Sturdevant
Jennifer Wigal

Others in attendance

Greg McMurray
Myles Gray, Geosyntec Consultants
Randy Watson, City of Wilsonville (by phone)
Karen Burgess, EPA Region 10 (by phone)

List of Handouts and Presentation Notes

- Agenda
- Advisory Committee Charter
- Federal variance rules
- State variance rules
- DEQ Presentations
 - Background
 - Federal and State Requirements
 - Rulemaking Overview
 - Justification for the Variance
 - Effectiveness of Treatment

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Meeting Summary

The meeting began with a round of introductions. Jennifer Wigal gave opening remarks. Aron Borok reviewed the agenda.

Alex Liverman gave building logistics and evacuation information and led review of the Charter, Roles and Ground Rules, as well as meeting mechanics of turning up name cards to note questions/comments and capturing terms needing a common understanding of definitions to be kept in a glossary. Kathryn VanNatta noted that meeting materials had not been provided a week prior and that the January public notice dates in the Charter were incorrect. She requested meeting materials be provided further in advance than a week to afford better opportunity for conferring with constituents prior to scheduled meetings.

Debra Sturdevant presented background information on the Willamette Basin Mercury Variance Rulemaking. Kathryn VanNatta requested clarification on the variance location being the Willamette River or the Willamette Basin. DEQ clarified the geographic area is the Willamette Basin. Abbie Laugtug requested information on how the determination is made as to whether or not progress toward meeting the mercury standard can be made. DEQ clarified that Advisory Committee input to DEQ will be used to support that finding. Michael O'Leary requested information on tribal consultation and participation in the rulemaking process. DEQ noted that DEQ had met with the Grand Ronde Tribe, that the Grand Ronde Tribe is participating on the Advisory Committee and that the EPA approval process requires tribal coordination. Kathryn VanNatta requested clarification around whether the derivation of preliminary mercury water concentration value of 0.14 ng/L used only 2006 available data and noted that the process of applying the translation process was not public until the 2016 petition for reconsideration of the Clean Water Services permit. DEQ explained that translating the fish tissue criterion available in 2006 (0.3 mg/kg) results in a water concentration of 0.92 ng/L and that the 0.14 ng/L number is close to extrapolating the results from the 2006 TMDL to be based on the new criterion. Kathryn requested DEQ convey that this number is a "moving part," and DEQ clarified that, although the TMDL is still in progress, DEQ does not expect the bioaccumulation factor and translator modeling that has been completed to change. In addition, whether the water column value is 0.92 ng/L or 0.14 ng/L, or something in between, a variance would still be needed. Michael O'Leary asked if alternatives besides a "waiver" are covered in a report. Because the Multi-Discharger Variance (MDV) will only address sources contributing less than 5% of the mercury load, how will the other pieces to control the 95% load contributions fit together? DEQ clarified that the TMDL process and DEQ's agency-wide Toxics Reduction Strategies are some of the other concurrent approaches to address nonpoint sources. The variance process is only applicable to permitted point source discharges, so the MDV process only addresses DEQ's responsibility to regulate point source discharges that require NPDES permits. In addition, the term "waiver" was captured for the glossary as not equivalent to a variance, with more information being presented to clarify the distinctions. Stephanie Eisner asked for confirmation that the Willamette Basin was the only basin in Oregon where a bioaccumulation factor and translator has been developed and DEQ confirmed. Kathryn VanNatta requested more information on the Clean Water Services individual variances in relation to the MDV and DEQ indicated that more information would be presented today. Alex Liverman conveyed a request from an Advisory Committee member that participants follow the Ground Rules around mutual respect by not referring to dischargers as "polluters" and captured the term "polluter" for the glossary as not equivalent to discharger.

Debra Sturdevant gave a presentation on the Federal and State Variance Requirements. Stephanie Eisner requested clarification that the Highest Attainable Condition was not just the lowest number possible, but that feasibility considerations were also involved in determining this and DEQ confirmed. Abbie Lautug

asked whether “approval by the Director” noted in the state rules for individual variances was DEQ’s Director, Richard Whitman. DEQ confirmed. Kathryn VanNatta requested DEQ consider providing a chart of variance types with approval sources, rules and requirements. Abbie Laugtug stated that DEQ’s consideration of specific businesses and their differences is appreciated because this will help avoid the issues that can come from a one-size-fits-all approach. Stephanie Eisner requested DEQ keep the environmental aspects in the calculus of the costs and benefits, especially in light of the small amount of load reduction from discharges as opposed to the larger contributions. Kathryn VanNatta requested EPA confirm that no other human-caused pollution justification variances have been approved. Lindsey Guzzo confirmed and noted that one is being considered in Region 5 and information about it can be shared when it goes out for public comment. Stephanie Eisner expressed concern that mercury management plans, including dental amalgam rule related reductions, already achieved reductions and demonstrating further reductions may be difficult. DEQ confirmed that this will be a topic of discussion for future Advisory Committee meetings. Kathryn VanNatta asked if permit limits can be adjusted for intake of mercury, which the rules don’t currently allow when concentration of a pollutant occurs. DEQ discussed other available permit tools, including intake credits and background concentration rules, being used before continuing down variance pathway.

Following lunch, Aron Borok presented on the Objectives and Schedule for the Rulemaking.

Aron Borok then presented on the Justification for the Variance for the Willamette Basin Mercury Variance Rulemaking. Kathryn VanNatta noted that the data on mercury in fish tissue in the Willamette shows great variability by species and that the “other/not specified” category of fish species included the most data. A discussion of the data sources and assumptions followed and DEQ concluded with the statement that the important message DEQ takes away from the slide is that none of the fish tissue sampled meets the criterion of 0.4 mg/kg methylmercury. (The phone connection and recording was lost for approximately 10 minutes during this discussion.) Kathryn VanNatta requested for the benefit of the group that DEQ provide distinctions between the terms “water quality-based effluent limit” (WQBEL) and “technology-based effluent limit” (TBEL). Spencer Bohaboy explained that the federal rules set an effluent limit floor by facility type that is technically achievable (TBEL), whereas WQBELs are calculated using the state (or federal) water quality criteria. The most stringent of the two is applied, which is typically the WQBEL. Kathryn VanNatta opined that regulatory certainty is needed for compliance with the standard for those that make up only 5% of the problem and the MDV seems like the right path.

Aron Borok presented on Effectiveness of Treatment for the Willamette Basin Mercury Variance Rulemaking. Stephanie Eisner pointed out that the term “sludge activation” should be revised to “activated Sludge.” Kathryn VanNatta requested defining for the benefit of the group “bench scale test” and Spencer Bohaboy clarified that it is a very small scale, research-level experiment that may not be able to be used for treatment at the volumes of wastewater being treated at public sewage treatment works. Stephanie Eisner opined that additional studies for membrane treatment may be available and Kathryn VanNatta offered studies. DEQ requested any additional studies be provided.

DEQ requested input from members on their level of support for the MDV Rulemaking at this point in time and on topics for future meetings. Stephanie Eisner indicated more discussion on Highest Attainable Condition and level of treatment and mercury minimization plan requirements would be good topics. Michael Karnosh wondered if there was an opportunity for longer term, bigger picture check-ins on the MDV and the other mercury-related processes. DEQ confirmed the on-going Willamette Mercury TMDL revision process and a recent focus on enhanced coordination efforts across the various processes would provide this opportunity. Lindsey Guzzo expressed concern about whether the timeline could be met,

given the time needed for coordination within EPA (regions and headquarters) to complete reviews of these precedent setting variances. Kathryn VanNatta opined that achieving desired flexibility in products often requires more work up front. She also noted that the Department needs to develop a compliance path that is workable and meets the laws currently on the books for variance in Oregon, given the situation that mercury levels do not meet the stringent criteria in Oregon. When DEQ asked the committee whether they understood why DEQ is pursuing the variance and whether they agreed that it is an appropriate tool for mercury in the Willamette basin under current circumstances, members in the room agreed and no one on the phone replied. DEQ is unsure how many committee members remained on the phone at that time.

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